

Amendments to Senate Bill No. 327
1st Reading Copy

Requested by Senator Dan McGee

For the Senate Judiciary Committee

Prepared by Valencia Lane
February 20, 2009 (2:54pm)

1. Title, line 4.

Following: "AN ACT"

Strike: "ADOPTING THE PROTECTION FOR MOTHERS-TO-BE ACT;"

2. Title, line 5 through line 6.

Following: "CHILD;" on line 5

Strike: remainder of line 5 through "PENALTIES;" on line 6

3. Title, line 6.

Following: "AMENDING"

Strike: "SECTION 41-1-103,"

Insert: "SECTIONS 45-5-102, 45-5-103, 45-5-201, AND 45-5-202,"

4. Page 1, line 10 through line 11.

Strike: section 1 in its entirety

Renumber: subsequent sections

5. Page 1, line 13.

Strike: "8"

Insert: "6"

6. Page 1, line 16 through page 2, line 27.

Strike: section 3 through section 6 in their entirety

Insert: "Section 2. Section 45-5-102, MCA, is amended to read:

"45-5-102. **Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human-being person or an unborn child; or

(b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, assault with a weapon, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human-being person or an unborn child.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, unless the person is less than 18 years of age at the time of the commission of the offense, by life

imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222."

{ Internal References to 45-5-102:

ok 40-4-219	ok 40-15-102	ok 41-5-206	ok 42-2-608
ok 45-2-103	ok 45-2-103	ok 45-2-103	ok 45-2-202
ok 45-5-103	ok 45-5-103	ok 45-5-104	ok 45-5-106
ok 45-8-405	ok 46-1-502	ok 46-16-226	ok 46-18-205
ok 46-18-219	ok 46-18-303	ok 46-23-502	ok 50-20-108*
ok 50-20-112*	ok 72-2-813 }		

Insert: "Section 3. Section 45-5-103, MCA, is amended to read:

"45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being person or an unborn child but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

(2) Mitigated deliberate homicide is a lesser included offense of deliberate homicide as defined in 45-5-102(1)(a), but is not a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b).

(3) Mitigating circumstances that reduce deliberate homicide to mitigated deliberate homicide are not an element of the reduced crime that the state is required to prove or an affirmative defense that the defendant is required to prove. Neither party has the burden of proof as to mitigating circumstances, but either party may present evidence of mitigation.

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222."

{ Internal References to 45-5-103:

ok 40-4-219	ok 40-15-102	ok 41-5-206	ok 42-2-608
ok 46-1-502	ok 46-16-226	ok 46-18-205	ok 46-18-219
ok 46-18-231	ok 46-23-502	ok 50-20-108*	ok 50-20-112*
ok 61-5-405	ok 72-2-813 }		

Insert: "Section 4. Section 45-5-201, MCA, is amended to read:

"45-5-201. Assault. (1) A person commits the offense of assault if the person:

(a) purposely or knowingly causes bodily injury to another person or an unborn child;

(b) negligently causes bodily injury to another person or an unborn child with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with ~~any individual~~ another person or an unborn child; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another person or an unborn child.

(2) A person convicted of assault shall be fined not to

exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

{ Internal References to 45-5-201:

ok 40-15-102 ok 40-15-102 ok 45-5-210 ok 45-5-212 }"

Insert: "Section 5. Section 45-5-202, MCA, is amended to read:

"45-5-202. **Aggravated assault.** (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another person or an unborn child or purposely or knowingly, with the use of physical force or contact, causes reasonable apprehension of serious bodily injury or death in another person or an unborn child.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term not to exceed 20 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222."

{ Internal References to 45-5-202:

ok 40-15-102 ok 40-15-102 ok 41-5-206 ok 42-2-608
ok 46-16-226 ok 46-18-205 ok 46-18-219 ok 46-18-231
ok 46-23-502 }"

Renumber: subsequent sections

7. Page 3, line 12 through line 15.

Strike: section 9 in its entirety

Renumber: subsequent sections

8. Page 3, line 21.

Strike: "[Sections 1 through 8] are"

Insert: "[Section 1] is"

9. Page 3, line 22 through line 23.

Following: "to" on line 22

Strike: remainder of line 22 through "8]" on line 23

Insert: "[section 1]"

- END -

SENATE BILL NO. 327

INTRODUCED BY A. CURTISS

gray bill for
m^sGees
SB032703.avl

1

2

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~ADOPTING THE PROTECTION FOR MOTHERS TO BE ACT,~~5 CREATING CRIMINAL OFFENSES INVOLVING DEATH OR INJURY TO AN UNBORN CHILD; ~~PROVIDING~~6 ~~PENALTIES~~; AND AMENDING SECTION ~~41-1-108~~, MCA."

7

1 45-5-102, 45-5-103, 45-5-201, AND 45-5-202,

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9

10 ~~NEW SECTION. Section 1. Short title. [Sections 1 through 8] may be cited as the "Protection for~~
11 ~~Mothers to Be Act".~~

12

13 NEW SECTION. Section 2. ^{1,} ~~Definition.~~ As used in [sections 1 through ^{6,} 8], "unborn child" means a
14 human who is conceived but is not yet born.

Insert: "Section 2. Section 45-5-102, MCA, is amended to read:

"45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being person or an unborn child; or

(b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, assault with a weapon, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being person or an unborn child.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, unless the person is less than 18 years of age at the time of the commission of the offense, by life

imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222."

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ok 45-5-103	ok 45-5-103	ok 45-5-104	ok 45-5-106
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ok 50-20-112*	ok 72-2-813 }		

"45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being person or an unborn child but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

(2) Mitigated deliberate homicide is a lesser included offense of deliberate homicide as defined in 45-5-102(1)(a), but is not a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b).

(3) Mitigating circumstances that reduce deliberate homicide to mitigated deliberate homicide are not an element of the reduced crime that the state is required to prove or an affirmative defense that the defendant is required to prove. Neither party has the burden of proof as to mitigating circumstances, but either party may present evidence of mitigation.

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222."

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ok 46-18-231	ok 46-23-502	ok 50-20-108*	ok 50-20-112*
ok 61-5-405	ok 72-2-813 }		

Insert: "Section 4. Section 45-5-201, MCA, is amended to read:

"45-5-201. Assault. (1) A person commits the offense of assault if the person:

(a) purposely or knowingly causes bodily injury to another person or an unborn child;

(b) negligently causes bodily injury to another person or an unborn child with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual another person or an unborn child; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another person or an unborn child.

(2) A person convicted of assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

{ Internal References to 45-5-201:

ok 40-15-102	ok 40-15-102	ok 45-5-210	ok 45-5-212 }
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Insert: "Section 5. Section 45-5-202, MCA, is amended to read:

"45-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another person or an unborn child or purposely or knowingly, with the use of physical force or contact, causes reasonable apprehension of serious bodily injury or death in another person or an unborn child.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term not to exceed 20 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222."

{ Internal References to 45-5-202:

ok 40-15-102	ok 40-15-102	ok 41-5-206	ok 42-2-608
ok 46-16-226	ok 46-18-205	ok 46-18-219	ok 46-18-231

6. 6
NEW SECTION. Section 7. Harm to unborn child -- exceptions. [Sections 1 through 8] do not apply

SB0327.01

- 1 (1) acts that are committed pursuant to usual and customary standards of medical practice, including
2 but not limited to:
3 (a) emergency medical care;
4 (b) lawful medical procedures, examinations, diagnostic testing, or therapeutic treatment with the consent
5 of the pregnant woman or with the consent of a person authorized by law to act on the woman's behalf; or
6 (2) acts of any woman with respect to her unborn child.

7
8 **NEW SECTION. Section 8. Other convictions not barred.** A prosecution for or conviction of an
9 offense under [sections 1 through 8] is not a bar to conviction of or punishment for any other crime committed
10 by the defendant as part of the same conduct.

11
12 ~~Section 9. Section 41-1-103, MGA, is amended to read:~~

13 ~~"41-1-103. Unborn children. A Except as provided in [sections 1 through 8], a child conceived but not~~
14 ~~yet born is to be deemed considered an existing person, so far as may be necessary for its interests in the event~~
15 ~~of its subsequent birth."~~

16
17 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
19 the part remains in effect in all valid applications that are severable from the invalid applications.

20
21 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 8] ^{is} intended to be
22 codified as an integral part of Title 45, chapter 5, and the provisions of Title 45, chapter 5, apply to [sections 1]
23 ~~through 8~~.

24 - END -